Supreme Court, U.S.
FILED
2005

No. 05-1016

In The
Supreme Court of the United States

ANDREW C. EDWARDS TRUST DATED OCTOBER 22, 1999, and ANDREW C. EDWARDS, an individual,

Petitioners,

vs.

THE IRVINE COMPANY, a Delaware corporation; and DOES 1 through 100, inclusive,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of California

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

California Government Code §68081 states:

> "Before the Supreme Court, a court of appeal, or the appellate division of a superior court, **renders a decision** in a proceeding other than a summary denial of a petition for an extraordinary writ, **based upon an issue which was not proposed or briefed by any party to the proceeding**, the court shall afford the parties an opportunity to present their views on the matter through supplemental briefing. **If the court fails to afford that opportunity, a rehearing shall be ordered upon timely petition of any party**." (Emphasis added.)

It is well-established California law that *California Government Code* §68081 requires the "rehearing" of any appellate court decision that is "based upon an issue which was not proposed or briefed by any party to the proceeding," if any party simply files a "timely petition." However, while *California Government Code* §68081 makes a "rehearing" mandatory simply upon the filing of a "timely petition," Petitioners herein are prepared to show that the California courts have, for the past six years or so, systematically refused to comply with the requirements of *California Government Code* §68081 in literally **hundreds** of cases (including, of course, Petitioners' case). Thus, the question presented in this case is not simply whether or not Petitioners' constitutional rights to due process and equal protection were violated by the rendering of a decision based on an issue upon which Petitioners were not given an opportunity to be heard. Rather, Petitioners also present the following questions:

QUESTIONS PRESENTED – Continued

1. Does the United States Supreme Court have an obligation to declare, as unconstitutional, the **continued and systematic** rendering of decisions without providing the litigants an opportunity to be heard;

2. Does the course of conduct engaged in by the California Supreme Court, and California Appellate Courts, of literally ignoring the requirements of *California Government Code* §68081 in hundreds of cases over more than six years constitute a sufficiently significant violation of due process rights to warrant intervention by the United States Supreme Court;

3. Have the California Appellate Courts, and the California Supreme Court, been repeatedly depriving litigants of due process rights in hundreds of cases for more than six years, and if so, should this Court allow this conduct to continue into the future indefinitely;

4. Should the United States Supreme Court decide cases that potentially involve the continued and systematic violation of due process rights by state courts, when it may turn out that said violations are caused by the California legislature's failure to provide sufficient staff, infrastructure and other resources necessary to the proper administration of justice.

Another different, but related, question presented in this case is whether or not a litigant's constitutional rights are violated when the Court of Appeal "modifies" its opinions "pretextually" to avoid the requirements imposed by *California Government Code* §68081.

QUESTIONS PRESENTED – Continued

Another different, but related, question presented in this case is whether or not a litigant's constitutional rights are violated when the Court of Appeal renders a decision based upon a rule of law that is not only erroneous, but the authority cited in the Court of Appeal's decision does not even discuss the law that the authority purportedly supports.

The more general question presented by this Petition is whether or not Petitioners' property rights were taken without due process of law, and if so, do Petitioners have any remedy.

PARTIES TO THE PROCEEDING

Petitioners:

ANDREW C. EDWARDS TRUST DATED OCTOBER 22, 1999; and

ANDREW C. EDWARDS, an individual

Respondent:

THE IRVINE COMPANY, a Delaware corporation

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Andrew C. Edwards Trust Dated October 22, 1999, and Andrew C. Edwards, an individual, respectfully petition for a writ of certiorari to the United States Supreme Court to review the judgment of the California Court of Appeal, Fourth Appellate District, Division Three, in the matter of *Edwards v. The Irvine Company*.

OPINIONS BELOW

1. The unreported opinion of the California Court of Appeals in Case No. G033700, filed on June 17, 2005 (Petitioners' Appendix ("Pet. App.") at A3-A17). There is no citation currently available for this opinion;

2. Order of the California Court of Appeals, filed on July 18, 2005, modifying its decision and denying Petitioners' Petition for Rehearing. The only citation to this opinion is the Westlaw citation 2005 WL 1420787 (Pet. App., A18-A24);

3. A "redline" version of Appellate Court's opinion created by Petitioners, showing the modifications made by the Appellate Court in response to Petitioners' Petition for Rehearing (Pet. App., A25-A40);

4. Order denying review by the California Supreme Court in Case No. S135952, filed on September 21, 2005 (Pet. App., A41). There is no citation currently available for this opinion.

JURISDICTION

The jurisdiction for this petition for a writ of certiorari is based upon 28 U.S.C. §1257(a).

THE FEDERAL ISSUES WERE RAISED IN THE APPELLATE COURT

1. Petition for Rehearing (Appellate Court), filed on July 5, 2005 (Pet. App., A42-A81);

2. Petition for Review (California Supreme Court), filed on July 27, 2005 (Pet. App., A82-A130).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

California Government Code §68081:

"Appellate review; supplemental briefing; rehearing.

Before the Supreme Court, a court of appeal, or the appellate division of a superior court renders a decision in a proceeding other than a summary denial of a petition for an extraordinary writ, based upon an issue which was not proposed or briefed by any party to the proceeding, the court shall afford the parties an opportunity to present their views on the matter through supplemental briefing. If the court fails to afford that opportunity, a rehearing shall be ordered upon the timely filing of any party.

STATEMENT OF FACTS

This litigation arises out of a dispute between Petitioners, Andrew C. Edwards, as Trustee of the Andrew C. Edwards Trust Dated October 22, 1999, and Andrew C. Edwards, an individual ("Petitioners"), and Respondent, The Irvine Company ("Respondent"), regarding Petitioners' right to access Petitioners' property ("The Black Star Coal Mine Property," which will hereinafter sometimes be referred to as "Black Star") through Respondent's property ("The Irvine Ranch").

From a factual perspective, this case is extraordinarily interesting because the transactions at issue, for the most part, concern the circumstances surrounding the conveyance of Black Star to Petitioners' predecessors in interest by way of Grant Deed in 1878, and the events that occurred thereafter. Essentially, the "facts" at issue in this case tell the history of the rise and fall of a real "wild west" mining town, and even include an Indian massacre. In fact, most of the evidence presented in the trial court consisted of stories, maps, articles and other historic documentation. The designated expert witnesses included historians, etc.

From a legal perspective, this case is interesting because it involves the rather complex and sophisticated laws regarding the interpretation of deeds, the establishment of easements, and the various other interrelated legal concepts, all of which have confounded attorneys, judges and legal scholars for over one hundred years.

Possibly due to the complexity of the facts of this case, the complexity of the legal issues presented and the lack of time that seems to plague us all, neither the trial court, the Court of Appeal, nor the California Supreme Court

fairly considered the matters presented by this truly extraordinary case. In this regard, much of the Appellate Court's opinion is "based on issues that were not proposed or briefed by either party" and contains many obvious legal and factual errors.

For example, the Court of Appeal's opinion in this case was based, in part, upon the Appellate Court's conclusion that the 1878 Grant Deed did not comply with the statute of frauds. In this regard, it is undisputed and undisputable, that the issue of compliance with the "statute of frauds" was not proposed or briefed by any party to this proceeding. In fact, Respondent never raised the statute of frauds as a defense in this case. This is evidenced by the fact that Respondent's Answer does not even set forth an affirmative defense based upon the statute of frauds.

Of course, the statute of frauds is a defense that is waived if not affirmatively raised. Therefore, by "rendering a decision" based upon the statute of frauds, the Court of Appeal not only violated *California Government Code* §68081, the Court of Appeal's conduct was extraordinarily prejudicial to Petitioners. As a result, the Court of Appeal was **required** to grant Petitioners' timely Petition for Rehearing. However, the Court of Appeal chose not to grant the timely filed Petition for Rehearing.

After the Court of Appeal denied Petitioners' timely filed Petition for Rehearing, Petitioners timely filed their Petition for Review with the California Supreme Court.[1]

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[1] See Petition for Review attached hereto at Pet. App., A82-A130, which also shows that Petitioners requested a determination of the constitutional questions at issue herein by the California Supreme Court.